

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) CRIMINAL NO. 04-00401HG  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
(03) ARNOLD C. ARRUIZA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on  
Monday, November 21, 2005, at 11:00 a.m., at Honolulu, Hawaii,

BEFORE: THE HONORABLE HELEN GILLMOR  
United States District Judge

REPORTED BY: STEPHEN B. PLATT, RMR, CRR  
Official U.S. District Court Reporter

APPEARANCES: THOMAS MUEHLECK, ESQ.  
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Attorney for the Government

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Attorney for the Defendant

1 MONDAY, NOVEMBER 21, 2005 11:00 A.M.

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3 THE CLERK: Criminal Number 04-401, defendant number  
4 three, the United States of America versus Arnold C. Arruiza.

5 This case is called for sentencing to Count One of  
6 the indictment, and hearing on motions for downward departure.

7 MR. MUEHLECK: Tom Muehleck with Special Agent of  
8 the FBI Joel Rudow, for the United States.

9 Good morning, Your Honor.

10 THE COURT: Good morning.

11 MS. BARNARD: And, good morning, Your Honor.

12 Mary Ann Barnard on behalf of Arnold C. Arruiza. He  
13 is present in court.

14 THE COURT: Good morning.

15 Mr. Arruiza, have you reviewed the presentence  
16 report with your attorney?

17 (Discussion off the record.  
18 between defendant and counsel.)

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Thank you; you may be seated.

21 Now, Ms. Barnard, I want to be clear, in terms of  
22 the record: You have moved to withdraw your motion to allow  
23 the defendant to withdraw his guilty plea?

24 MS. BARNARD: That's correct.

25 THE COURT: Okay.

1           Let me just say for the record -- because I don't  
2   want this coming back -- I would have denied it. So I don't  
3   want that to be unclear in the record. I do not believe that  
4   there were grounds to show that he was anything other than a  
5   knowing and voluntary plea giver. He understood, I believe,  
6   what was going on; that the judge asked the appropriate  
7   questions; and I do not believe there was a reason to withdraw  
8   it.

9           MR. MUEHLECK: (Standing.)

10          THE COURT: Mr. Muehleck?

11          MR. MUEHLECK: Your Honor, since I was outside the  
12   court when the colloquy the court had with the defendant on  
13   that, would you ask the defendant, to make sure that was his  
14   decision to withdraw that motion, withdraw the pleas,  
15   Your Honor?

16          THE COURT: Okay.

17          Mr. Arruiza, earlier you made a motion to withdraw  
18   your guilty plea. And now, Ms. Barnard indicates that you  
19   wish to withdraw that motion to withdraw your guilty plea.

20          Is that your decision?

21          THE DEFENDANT: Yes, Your Honor.

22          THE COURT: Okay, thank you.

23          MR. MUEHLECK: Thank you.

24          THE COURT: Okay.

25          Now, let's turn to the sentencing.

1 MS. BARNARD: Your Honor, excuse me.

2 THE COURT: Yes?

3 MS. BARNARD: I do have a preliminary matter with  
4 respect to the PSI.

5 THE COURT: Well, why don't you sit down,  
6 Mr. Arruiza. That's where we're going right now.

7 MS. BARNARD: Okay.

8 THE COURT: I have difficulty with your name. Would  
9 you pronounce it again for me?

10 MS. BARNARD: "Barnard."

11 THE COURT: As in the college?

12 MS. BARNARD: Exactly.

13 THE COURT: All right. I have a graduate, so...  
14 But some people pronounce it differently.

15 What I am asking for now are objections to the  
16 presentence report. So if there is anything that you have,  
17 that you object to in the presentence report, or a correction  
18 that you believe you should make, this is your opportunity to  
19 do so.

20 MS. BARNARD: Well, I have a very minor correction.  
21 One of Mr. Arruiza's children's name is misspelled. It's  
22 Jaclyn, J-A-C-L-Y-N, without a K. That would be Page 16.

23 THE COURT: Okay, that is corrected. Anything else?

24 MS. BARNARD: Yes, there's another amendment I wish  
25 to make based upon new information. That would be item 47

1 under "pending charges." And I wish to submit a letter to the  
2 court.

3           What happened was, that item reflects that  
4 Mr. Arruiza had outstanding bench warrants in district court  
5 on Maui. And his prior counsel, Lane Takahashi, enlisted the  
6 Public Defender over there to -- on a motion to recall those  
7 warrants. And I have a letter from the deputy Public  
8 Defender, Jennifer Eng, E-N-G, reflecting that she did appear  
9 on the motion to recall, the warrants were recalled; however,  
10 the judge would not convert outstanding fines to -- and  
11 community service to concurrent jail time. So he will have  
12 outstanding fines on this case. The community service was  
13 converted to fines, but he will no longer have any outstanding  
14 warrants.

15           So I wanted to submit this letter to the court and  
16 move to strike item 47 and place the new information regarding  
17 the current status of those cases under other arrests.

18           THE COURT: I thought you said 47, rather than 48?

19           MS. BARNARD: Right. Item 47, I'm moving to strike  
20 that, and based upon the new information that he no longer has  
21 outstanding warrants, that the information should be included  
22 under other arrests.

23           THE COURT: Well, I think it would be more  
24 appropriate to leave 47 in and add the new information,  
25 because it's not that 47 is untrue, it's just that there have

1     been further developments.

2                 MS. BARNARD:   Yes.

3                 THE COURT:   So we'll take the letter, and we will  
4     include it as a new development.   You can give it to  
5     Mr. Hisashima.

6                 Do you have a copy of it, Mr. Muehleck?

7                 MR. MUEHLECK:   Yes.

8                 THE COURT:   Okay, if you would give that to  
9     Mr. Hisashima, Ms. Barnard.

10                MS. BARNARD:   Thank you, Your Honor (tendering  
11     document to the courtroom manager).

12                THE CLERK:   (Tendering same to the court.)

13                THE COURT:   (Perusing same.)

14                Okay, we will file that and make it an addendum to  
15     the presentence report.

16                Okay, now, any objections, Ms. Barnard, to the  
17     presentence report, other than the ones that you have put  
18     forward?

19                MS. BARNARD:   No, Your Honor.

20                THE COURT:   Okay.

21                Mr. Muehleck?

22                MR. MUEHLECK:   No, Your Honor, not in light of the  
23     court's rulings the last time we were here, in response to our  
24     objection at that time.   No.

25                THE COURT:   Okay.   But Ms. Barnard was not here, and

1 I want the record to be clear.

2 What I ruled, Ms. Barnard, was that the Probation  
3 Office was incorrect in their calculation with respect to the  
4 7 grams as opposed to 50 grams, and the court finds that their  
5 calculations are incorrect because of that. And I believe the  
6 transcript makes that clear, from the last hearing.

7 MR. MUEHLECK: Yes, Your Honor.

8 THE COURT: Is there anything that you want to say  
9 about that, Ms. Barnard?

10 MS. BARNARD: Your Honor, rather than to continue to  
11 argue that point, I believe it's in the record that there are  
12 two different viewpoints. I would just like the court to  
13 consider my motion for downward departure in which I address  
14 that. And I'm asking the court to depart downward to -- more  
15 in tune with what is the PSI calculation.

16 THE COURT: Okay, so to state where we are, I have  
17 ruled previously in the hearing that was held on August 29,  
18 2005, with respect to the government's objection. And so the  
19 advisory guidelines, which the court has indicated are of  
20 value to the court because they provide for a means of  
21 continuity of sentencing across the country, the Sentencing  
22 Commission provides policy positions and points out particular  
23 statistics and factors to be considered in the particular  
24 charge and for a particular defendant, and all of those things  
25 are helpful to the court, so the court considers the advisory

1 guidelines.

2           And the advisory guidelines here would be 34, minus  
3 the 3 points for acceptance of responsibility, so he would be  
4 a 31 criminal history category -- 31, with a criminal history  
5 category of 5, which gives him 168 to 210 months range, but  
6 there is a mandatory minimum given his record of 240 months.  
7 The fine range would be \$15,000 to \$8 million. And the  
8 supervised release, I believe, would remain the same: Eight  
9 years. And of course there is a \$100 special assessment, and  
10 restitution isn't applicable.

11           Okay, now, this is your opportunity -- and I have  
12 received letters and pictures on behalf of the defendant,  
13 which I have reviewed and will take into account.

14           Now, Ms. Barnard, this is your opportunity to speak  
15 to sentencing, and the motion for downward departure filed by  
16 the government.

17           MS. BARNARD: Thank you, Your Honor.

18           We are asking that the court find that a seven-level  
19 downward departure from the court's finding of level 31 would  
20 be warranted in this case as the amount of time that would be  
21 necessary for the protection of the public. And the other  
22 factors that the court has to consider.

23           First of all, I do appreciate the government's  
24 willingness to recommend the decrease in the departure that  
25 they have based upon substantial assistance. And I submit



1 that the court should depart downward from there because,  
2 basically, Your Honor, that would be 13 and a half years under  
3 the government's recommendation, and Mr. Arruiza, being 38  
4 years old right now, would be in his early fifties. Early  
5 fifties is not frightening for some of us here, but for  
6 somebody 38 years old, it's very discouraging.

7 Basically, Mr. Arruiza has made a significant effort  
8 and a showing that he's motivated, and that he desires to  
9 change.

10 Basically, Your Honor, as opposed to some other  
11 defendants in Mr. Arruiza's situation, I have had a chance to  
12 work with him, and I can tell the court that Mr. Arruiza has a  
13 conscience. He really cares about other people. He has the  
14 capacity to care about other people. He has the capacity to  
15 realize that he's hurt other people. And he does express that  
16 in his letter to the court.

17 Your Honor, I believe he's taken some steps  
18 necessary toward his own rehabilitation. As you can see, all  
19 of his certificates, communication in writing, parenting --  
20 two classes in parenting -- substance abuse, physical fitness.  
21 These things are very fortunately made available in the local  
22 federal detention facility, and not all defendants take  
23 advantage. But he has been taking full advantage of those  
24 opportunities, and he's learned a lot.

25 The letter he wrote for the court, he said it took

1 him a long time to write that, many, many rewrites, and he did  
2 do well in his communication and writing class, and he's  
3 really made a substantial effort to try to better himself. He  
4 knows that in order to protect the public by staying out of --  
5 well, preventing himself from relapsing has basically been a  
6 recurring problem with him. Although he's had substantial  
7 periods where he was drug-free, he's always had relapses,  
8 always gotten in trouble. And so to prevent this from  
9 happening in the future, of course, a substantial term in jail  
10 is probably warranted for the public's protection, but 13 and  
11 a half years, we submit, would be too much. He's motivated to  
12 change because of his family ties. As the court can see from  
13 the pictures and the letters from his children, he does stay  
14 involved with them.

15           When I first read the PSI, when I first got this  
16 file, I was a little bit discouraged to see that he had seven  
17 children by four different women. And on the surface that  
18 looks very bad. But then when you find out that these  
19 children are doing well, well cared for, and he makes every  
20 effort to stay involved with them. And it's just very tragic  
21 that we are here today, that he can't be in their lives more.  
22 But he's taking advantage of the courses to help him to be  
23 involved in their lives. And when we come to the end of this  
24 sentencing, I can make a request that he can be closer to his  
25 children.

1           Basically, he knows he needs intensive, highly  
2   structured substance abuse treatment of the most intense  
3   variety.

4           Your Honor, I've also addressed that we do not  
5   believe that the upward adjustment for being a manager is  
6   warranted. Or, in the alternative, that his managerial role  
7   was so minimal that the court should depart downwardly from  
8   that, that two-level increase, too.

9           So I do have a witness that I want to present on  
10   that. That would be Agent Joel Rudow.

11           THE COURT: Okay, Ms. Barnard, here's how it works:

12           I ask at the beginning about any objections to the  
13   presentence report. And the presentence report is what has to  
14   do with the manager points.

15           I have already made the findings with respect to the  
16   manager points. I have already announced -- and asked you if  
17   you had any objection to that calculation. And you said no.  
18   Now, at sentencing, when you're talking about sentencing, you  
19   have a witness you want to put on about an issue that has been  
20   decided earlier in this proceeding. So I'm a little confused.

21           The way it works is, we deal with, up front, what  
22   the calculations are going to be. And we've already done  
23   that. Now you are attacking the calculations. I don't know  
24   if you are attacking them with the idea of you just think that  
25   it is wrong and shouldn't be there, or if you are saying that

1 it's part of the downward departure.

2 Basically, it's out of order at this point, and I'm  
3 not quite sure what you're asking. It goes, are we going to  
4 accept the report or not? What are the objections? I make  
5 findings, and then we move on to the sentencing portion. But  
6 we seem to have done that, and now we're going back. So what  
7 is it you want to do?

8 MS. BARNARD: Yes, I apologize for that, Your Honor.

9 Well, I stated two alternatives in my memorandum. I  
10 guess what I want to do at this time is try to mitigate that  
11 managerial role in support of downward departure.

12 THE COURT: I am willing to reopen if you want to  
13 reopen because you were unclear about how this was proceeding.  
14 I'm not trying to tell you what you ought to be doing. I am  
15 just trying to put it into an orderly context so I can make a  
16 decision and make the proper findings after I make a decision.  
17 But if I don't have the information before I make the  
18 decision, as to how I am treating the PSI, uh -- so I am not  
19 trying to change your theory, I am just trying to put it in a  
20 structure that allows me to make decisions with all of the  
21 information before me.

22 MS. BARNARD: Frankly, Your Honor, I had my mind so  
23 concentrating on drug quantity and that level increase that I  
24 sort of omitted to bring this up as a separate category,  
25 attacking the PSI.

1 So, if the court will allow me to reopen --

2 THE COURT: Sure.

3 MS. BARNARD: -- I'd like to do it that way.

4 THE COURT: Okay.

5 And who is it that you want to call?

6 MS. BARNARD: Special Agent Joel Rudow.

7 MR. MUEHLECK: My case agent, Your Honor.

8 THE COURT: Oh, okay.

9 MR. MUEHLECK: Well, may the government be heard,  
10 Your Honor?

11 THE COURT: Yes.

12 MR. MUEHLECK: First of all, Agent Rudow was served,  
13 and we told him to come over here, of course. He was served  
14 to come here. The 28 CFR, Section 1623, requires, of course,  
15 the defendant, when they seek information from a Department of  
16 Justice employee, or when the Department of Justice is a  
17 party, is supposed to give us an affidavit about what they are  
18 going to testify about, or what they are going to ask the  
19 witness to testify about. The Touhey regulations, we call  
20 them.

21 And rather than delay this, we told the agent to  
22 come over. I am required to report that to their regional  
23 counsel, their local counsel. I did. We agreed to have Agent  
24 Rudow over here, so I think there should be a proffer. Even  
25 in the long and short of this, Judge, how can the defendant

1 back out of a manager role when he admitted this in the plea  
2 agreement, that he instructed Mary Vanderbilt, his girlfriend,  
3 to make two trips from Maui, to go over from Lana'i to Maui,  
4 to pick up the stuff and come back. I mean, isn't this a  
5 nice, I guess argument, philosophical argument here? Because  
6 he's admitted these things in the plea agreement under oath.

7 That's where we are, Judge. I have the agent here,  
8 Your Honor.

9 THE COURT: Yes.

10 Ms. Barnard?

11 MS. BARNARD: An offer of proof, Your Honor?

12 THE COURT: Well, he's right. There is a way you're  
13 supposed to call a government agent, and you haven't done it.  
14 It's a regulation. It's a means of them having the ability to  
15 consult with the attorney and have an agency position with  
16 respect to how they proceed. It makes sense. It's somewhat  
17 burdensome, but it exists in this context because you are  
18 asking somebody who represents an agency to take the stand,  
19 and they should have the right to talk to their counsel, as  
20 well.

21 And Mr. Muehleck has done the catch-up for you, but  
22 he would be well within his rights to say, he hasn't been  
23 properly called. So you need to deal with that.

24 Okay, now, what is it that is your offer of proof?

25 MS. BARNARD: My offer of proof is that he would be

1 able to testify that Arnold's involving his girlfriend was  
2 toward the end of this transport back and forth of the drugs.  
3 And the overall majority of it was done by himself; that she  
4 really didn't have an employer-employee or an underling type  
5 of relationship. She was very heavily involved with drugs,  
6 herself, and she was willing to do it. She didn't make any  
7 special trips. She was a frequent traveler back and forth  
8 anyway.

9           So I'm trying to show that the factors are somewhat  
10 similar to the McGregor case, and that Mr. Arruiza's role in  
11 this conspiracy did not significantly change. He wasn't  
12 really in an employer-employee relationship with her in the  
13 usual conspirator sense. In other words, a boss-employee  
14 relationship. It's more that they were mutually users of the  
15 drugs, and it was more of a mutual thing than...

16           And the way Mr. Rudow -- or Agent Rudow worded it in  
17 his report, which is attached to my sentencing memorandum, was  
18 that he had her transport the drugs. He doesn't use the word  
19 "ordered" her. So I believe he can clarify the details of  
20 that somewhat.

21           THE COURT: Well --

22           MR. MUEHLECK: Government response?

23           THE COURT: Yes.

24           MR. MUEHLECK: Well, I'll stipulate that he would  
25 say a lot of this, except he can't make the employee-employer

1 determination, Judge.

2 This is a guideline provisions legal definition that  
3 Agent Rudow can't make.

4 I'll stipulate that he asked her to do it; that they  
5 were boyfriend/girlfriend; that they were using drugs; and  
6 that the two trips may have been at the end of the  
7 conspiracy -- is that correct?

8 AGENT RUDOW: Yes.

9 MR. MUEHLECK: Agent Rudow indicates that's true.

10 But the issue of supervisor, director, or organizer,  
11 Judge, in that connotation, the witness can't answer, and  
12 we'll go with it from there. Plus, that information that he  
13 made some of the trips himself, or most of the trips himself,  
14 that's in the plea agreement. That's represented in the  
15 presentence report, I believe.

16 THE COURT: Okay.

17 Taking everything that you have represented,  
18 Ms. Barnard, I don't see how that is going to change the  
19 structure. The fact that someone is a girlfriend, as well as  
20 a person who is in the structure of the drug distribution,  
21 it's very common for people to have relations: They have  
22 brothers, they have wives, they have other relations. That  
23 isn't significant, in terms of a structure as to why somebody  
24 does something. They are still taking orders, and they are  
25 still carrying out the orders.



1           So you haven't properly subpoenaed him, and the  
2 government has accepted your proffer as true. I accept your  
3 proffer as true. We're not going to hear from the agent on  
4 both those bases: One, we don't need to, and, two, he wasn't  
5 properly subpoenaed. So I am denying your objection to the  
6 presentence report.

7           And just to be sure that we are totally clear here,  
8 the court adopts the factual statements contained in the  
9 presentence investigation report, but it is modified by the  
10 statements the court made previously with respect to the  
11 calculations because the court is not in agreement with the  
12 Probation Officer's statement that the defendant did not admit  
13 to the 50 grams. The judge asked him directly if it was 50  
14 grams of methamphetamine, its salts, isomers and salts of its  
15 isomers? And he responded, yes. It was a clear question and  
16 a clear answer.

17           And the fact that later he talked about a particular  
18 seven grams does not change the fact that he admitted in the  
19 plea colloquy to the 50 grams.

20           As for the objection with respect to his supervisory  
21 role, I believe there are sufficient facts here to find a  
22 supervisory role, and I so find.

23           And so the presentence report, as modified by the  
24 court, is placed in the record under seal. If an appeal is  
25 taken, counsel, on appeal, may be permitted access to the

1 sealed report, with the exception of the "recommendations"  
2 section.

3 The court accepts the plea agreement because it is  
4 satisfied that the agreement adequately reflects the  
5 seriousness of the actual offense behavior, and that accepting  
6 the plea agreement will not undermine the statutory purposes  
7 of sentencing.

8 And the statements made previously by the court,  
9 with respect to the guidelines, as calculated by the court,  
10 remain in effect.

11 Now, uh --

12 MS. EVERSOL: Your Honor, if I may, real quick?

13 The supervised release range is altered, so it  
14 should be ten years, instead of -- is the guideline range. I  
15 believe you initially said eight years. And it is changed due  
16 to the statutory change.

17 THE COURT: Thank you. That is of assistance.

18 MR. MUEHLECK: That's right.

19 THE COURT: The supervised release range is ten  
20 years. Okay.

21 Now, Ms. Barnard, you may speak to sentencing in  
22 general at this point.

23 MS. BARNARD: Okay, thank you, Your Honor.

24 Well, the court has indicated that it has had a  
25 chance to review all of our submissions, so I won't repeat all

1 of that.

2 Other than the amount of jail time, I am going to  
3 leave it -- the period of supervised release, and that sort of  
4 thing, to the court's discretion, acknowledging that a lengthy  
5 period of supervised release would probably be appropriate in  
6 this case.

7 THE COURT: What is the exact figure you are asking  
8 for?

9 MS. BARNARD: For supervised release?

10 THE COURT: No, for the --

11 MS. BARNARD: Okay, the exact figure is 92 months.

12 THE COURT: Okay, thank you.

13 Is there anything else you wanted to say?

14 MS. BARNARD: I believe I pretty much covered  
15 everything, and I would just ask that the court allow  
16 Mr. Arruiza, himself, to address the court.

17 THE COURT: Okay.

18 I am afraid that we have to cut this short. I have  
19 an engagement that I must be on time for, so we will reconvene  
20 at 2:00, if that's okay with everyone -- or 2:30.

21 MR. MUEHLECK: 2:30.

22 THE COURT: 2:30.

23 MR. MUEHLECK: Yes, ma'am.

24 THE COURT: And we will then hear from Mr. Arruiza.

25 We stand in recess.

1 THE CLERK: Please rise.

2 Court stands recessed until 2:30 p.m.

3 (A recess was taken at 11:37 a.m.)

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1 AFTERNOON SESSION

2:30 P.M.

2 - - -

3 THE COURT: Okay, we're back on the record with both  
4 counsel and the defendant.

5 Were you here before?

6 MR. MUEHLECK: No, Your Honor.

7 MR. YOSHIHARA: No, Your Honor. I'm sorry --

8 THE COURT: Malia was here.

9 MR. YOSHIHARA: Yes, Your Honor, she was.

10 THE COURT: Okay, please be seated.

11 Now, I believe that we have gone through -- and you  
12 had said what you wanted to say, Ms. Barnard, but if you have  
13 anything else you want to say, since that was the point which  
14 we left off and we were about to hear from the defendant. But  
15 if there's anything else you want to say, you may do so,  
16 before we move on to the defendant.

17 MS. BARNARD: Nothing further, Your Honor.

18 THE COURT: Okay, thank you, then.

19 Let's hear from the defendant.

20 Mr. Arruiza?

21 THE DEFENDANT: Yes, Your Honor.

22 Well, I had a million and one things to say, but I  
23 just want to keep it short and say that I'm sad that all this  
24 had to happen this way. I'm just sorry that I'm not there for  
25 my kids and my mom that has cancer. I'm ready to put all this

1 behind me and learn from it.

2 That's all I got to say.

3 THE COURT: Thank you.

4 Mr. Muehleck?

5 MR. MUEHLECK: Your Honor, we have a motion for  
6 downward departure, based upon the defendant's substantial  
7 assistance with the United States -- federal authorities, I  
8 should say, under 5K of the sentencing guidelines. And I  
9 would like to address that now, if I could?

10 THE COURT: Yes.

11 MR. MUEHLECK: Your Honor, basically, the defendant  
12 cooperated with the United States at the time of his arrest  
13 and gave information leading to information that corroborated  
14 what the United States pretty much had over the wire tap; that  
15 Mr. Keahi, whom the court will remember as the older Hawaiian  
16 gentleman from Maui, who was represented by Mr. Lowenthal,  
17 verifying that he was supplying drugs -- Keahi was supplying  
18 drugs that he got from Sham Vierra to the defendant, which  
19 then went over and were distributed on Lana'i.

20 The defendant admitted that, provided information,  
21 and would have been a witness against Mr. Keahi if he went to  
22 trial. Mr. Keahi of course, did not go to trial. We made it  
23 known that Mr. Arruiza would testify, and then Mr. Lowenthal  
24 pled Mr. Keahi.

25 And we mentioned Ms. Vanderbelt in there. Well, the

1 defendant did initially provide information about his  
2 girlfriend, Mary Vanderbelt, and then sort of went sideways on  
3 us and said, well, you know, she did that only because I  
4 forced her to do that.

5           And of course, that was not the case. He was  
6 protecting her. And I took the change of plea of  
7 Ms. Vanderbelt before the magistrate, and Jack Schweigert, her  
8 attorney, and that didn't happen. She under oath admitted  
9 that she knew what was going on, was not threatened to do  
10 that, and she did that.

11           So while we mentioned he did provide information  
12 about Ms. Vanderbelt, he was not a real good witness for the  
13 United States against Ms. Vanderbelt, and that's where  
14 Mr. Keahi got credit, as the court is well aware. So we're  
15 not double counting there, both for Mr. Vanderbelt -- against  
16 Ms. Vanderbelt with Keahi and the defendant; it was mostly  
17 Mr. Keahi. But the information that he provided to us was of  
18 assistance.

19           We note in a footnote that the defendant had two  
20 prior drug felonies, and we didn't triple bill him, so to  
21 speak; we filed one sentencing enhancement. And, frankly,  
22 Judge, the defendant's criminal history is very bad. The  
23 offenses are bad. It's drug offenses. It's abuse offenses.  
24 There's lack of responsibility, personal responsibility, on  
25 his part with the family, etc., etc.

1           They say, well, the defendant's children are doing  
2 well. Maybe that's because they are not with the defendant,  
3 they're with someone else. There's some bad stuff here in the  
4 presentence report. The court is well aware of that.

5           But the defendant cooperated. The defendant's  
6 information was of assistance to the United States. We have  
7 recommended a downward from 240 to 162. We leave that within  
8 the discretion of the court. We don't think we are being  
9 cheap here. We didn't triple bill him, or he would have  
10 started out at life.

11           The defendant tried to withdraw his plea. There's  
12 been a lot of different stuff here, Judge. Thank you. We'll  
13 leave it within the discretion of the court.

14           THE COURT: What about Mr. U'u? Because we gave him  
15 140 months.

16           MR. MUEHLECK: I understand that, but Mr. U'u, of  
17 course -- Mr. U'u is looking at a Rule 35, judge. He's square  
18 in the face of a Rule 35. I am sure he is very happy with  
19 that, and I'm sure Mr. Ching is very happy with that, because  
20 he would have testified against Mr. Tolbert. And Mr. Tolbert  
21 is set for pretrial on Wednesday, and change of plea scheduled  
22 for Tuesday, the 29th. So I think Mr. U'u is going to get the  
23 benefit of his position. Mr. U'u had a bad record, too. And  
24 I don't have that in front of me, but there was -- there were  
25 no drugs on that, I don't believe, it was just a terrible



1 record of every other thing with Mr. U'u. And he cooperated,  
2 he'll do something, and he's looking at a Rule 35 now. I am  
3 going to recommend that to my section head, and I'm sure that  
4 will happen.

5 If the court has any particular question vis-a-vis  
6 that --

7 THE COURT: No, I just wanted your comment.

8 MR. MUEHLECK: No, that's what's gonna happen, Your  
9 Honor.

10 THE COURT: Okay, thank you.

11 MR. MUEHLECK: Thank you.

12 THE COURT: At this time I will state the sentence I  
13 intend to impose, and the attorneys will have a final  
14 opportunity to make an objection, legally speaking.

15 Now, this is a defendant with, as Mr. Muehleck has  
16 just said, a bad record. And that's very important. The fact  
17 that this is the third conviction for drugs is of concern to  
18 this court. And that means that that has to be taken into  
19 account.

20 In addition, the defendant has other serious law  
21 violations, and those are being counted. There is the  
22 violation with respect to abuse of a household member in '96;  
23 there's the violation of a temporary restraining order; then  
24 there's the violation of an order for protection; then there's  
25 the promoting dangerous drugs in '96; and then in 2000,

1 there's a terroristic threatening in the second degree; and  
2 then in '02, there is distribution of a controlled substance.

3 Now, in addition, there are a number of other  
4 smaller things.

5 At 38, while you have worked, you have a bad  
6 criminal history. You are in category five. And I believe  
7 that that is something that the court, in terms of protecting  
8 the community, has to pay attention to.

9 I am going to go along with what the government is  
10 asking, for 162 months, and I am going to impose supervised  
11 release of eight years. I'm not imposing a fine because I  
12 don't believe you can pay it. Restitution isn't applicable.  
13 There is a special assessment of \$100.

14 There are conditions:

15 One, you shall abide by the standard conditions of  
16 supervision. Two, you shall not commit any crimes, federal,  
17 state or local. Three, you shall not possess any illegal  
18 controlled substances. Four, you shall cooperate in the  
19 collection of DNA, as directed by the Probation Office. Five,  
20 you shall refrain from any unlawful use of a controlled  
21 substance, and you shall submit to one drug test within 15  
22 days of commencement of supervision, and at least two drug  
23 tests thereafter, as directed by the Probation Officer, up to  
24 a total of eight drug tests per month.

25 Number six, you shall not possess a firearm,

1 ammunition, destructive device or any other dangerous weapon.  
2 Number seven, you shall participate in a substance abuse  
3 program, which may include drug and alcohol testing, at the  
4 discretion and direction of the Probation Office. You are to  
5 refrain from the possession and/or use of alcohol while  
6 participating in the substance abuse treatment.

7           Number eight, you shall execute all financial  
8 disclosure forms requested by the Probation Office, and  
9 provide access to any requested financial information. Number  
10 nine, you shall submit your person, residence, place of  
11 employment, or vehicle to a search conducted by the U.S.  
12 Probation Office at a reasonable time and in a reasonable  
13 manner, based upon reasonable suspicion of contraband or  
14 evidence of a violation of a condition of supervision.  
15 Failure to submit to such a search may be grounds for  
16 revocation. And you shall warn any other residents that the  
17 premises may be subject to search pursuant to this condition.

18           Now, I am going to ask that you get educational,  
19 vocational and drug treatment while you are incarcerated. I  
20 will ask for the 500-hour drug treatment.

21           Do either counsel know of any reason why the  
22 sentence, as stated, should not be imposed?

23           MR. MUEHLECK: The government does not, Your Honor.

24           MS. BARNARD: Your Honor, we believe that what we  
25 requested is sufficient to protect the public, and as much as

1 is necessary.

2 THE COURT: And I appreciate that, Ms. Barnard, but  
3 I have to look at your client in relation to other people with  
4 the varying backgrounds for which they come in here, and your  
5 client has very bad record, and I believe that has to go into  
6 the calculation of what is necessary in order to protect the  
7 public. And I believe that he is in a category that requires  
8 a sentence as stated.

9 Now, you may appeal your conviction if you believe  
10 that your guilty plea was somehow unlawful, or involuntary, or  
11 if there's some other fundamental defect in the proceeding  
12 that was not waived by your guilty plea. You have entered  
13 into a plea which waives some of your rights to appeal the  
14 sentence itself, and such waivers are generally enforceable;  
15 but if you believe the waiver is unenforceable, you can  
16 present that theory to the Appellate Court.

17 And with few exceptions, any notice of appeal must  
18 be filed within ten days of judgment being entered in your  
19 case. If you are unable to pay the cost of an appeal, you may  
20 apply for leave to appeal in forma pauperis. If you so  
21 request, the clerk of the court will prepare and file a notice  
22 of appeal on your behalf.

23 Are there any counts to be dismissed, Mr. Muehleck?

24 MR. MUEHLECK: Count Eight, move to dismiss in  
25 accordance with the plea agreement, Your Honor.

1 THE COURT: Okay, hearing no objection, Count Eight  
2 is dismissed.

3 Yes, Mr. Hisashima?

4 THE CLERK: I'm not sure, Judge, if I heard  
5 correctly, but I think --

6 (Discussion off the record between  
7 the court and the courtroom manager.)

8 THE COURT: You are correct, Mr. Hisashima, it can  
9 go all the way to ten --

10 MR. MUEHLECK: Right.

11 THE COURT: -- but I think eight ought to be  
12 sufficient. And if things go well, less time than that.

13 Okay, now, you did want to ask something about  
14 location, Ms. Barnard?

15 MS. BARNARD: Yes, Your Honor.

16 Mr. Arruiza's two youngest children are in the state  
17 of North Dakota, Jaclyn and Isaac, and so he is asking to be  
18 in the Sanstone facility --

19 THE COURT: Say that again.

20 MS. BARNARD: -- in Minnesota. Sanstone,  
21 S-A-N-S-T-O-N-E.

22 MR. MUEHLECK: Minnesota, Your Honor.

23 THE COURT: Sanstone?

24 MS. BARNARD: That would be his first choice.

25 THE COURT: Uh-huh.

1 MS. BARNARD: Second choice would be Pensacola,  
2 Florida.

3 THE COURT: What kind of facilities are these?

4 MS. BARNARD: Well, I know the Pensacola, Florida,  
5 is supposed to have an intensive substance abuse treatment  
6 program.

7 THE COURT: Well, I am talking about the level of  
8 security, etc.

9 MS. BARNARD: Oh.

10 MR. MUEHLECK: I know it's an FCI in Sanstone. I  
11 don't know the level, Your Honor.

12 THE COURT: Do you think he would be qualified for  
13 an FCI?

14 MR. MUEHLECK: I don't know, Your Honor.

15 THE COURT: Okay.

16 And what about Pensacola, Ms. Barnard? Do you know  
17 whether it is a prison -- medium security, high security, low  
18 security, a camp?

19 (Discussion off the record  
20 between counsel and the defendant.)

21 THE COURT: I'll look into that, but I don't think  
22 it makes -- I'm not sure it makes sense to recommend him to a  
23 camp with 162 months, and he is on his third drug conviction.  
24 I don't think that's going to happen.

25 MS. BARNARD: Okay.

1           And third choice would be in South Dakota, there's a  
2 facility.

3           THE COURT: Okay, I will look at that and -- I'm not  
4 going to recommend him to a camp, because I don't think that  
5 makes a lot of sense. If the Minnesota one, Pensacola and  
6 South Dakota have a medium, I'll recommend them, but otherwise  
7 I am just going to go with the ones that are medium, because  
8 it's just not realistic to think that he is going to get into  
9 a low security with that kind of record. He is a category  
10 five. And he's got violence, in terms of his background, so  
11 there's no way they are going to put him in a camp, I don't  
12 think.

13           MS. BARNARD: Your Honor, he's also asking the court  
14 to consider Leavenworth, Kansas.

15           MR. MUEHLECK: -- (inaudible) --

16           THE COURT: I can't hear you.

17           MR. MUEHLECK: I'm not sure that there is anything  
18 there, Judge, other than the disciplinary barracks for the  
19 armed forces, U.S. Army disciplinary barracks. And state  
20 facilities at Leavenworth, but...

21           THE COURT: You think it's for state procedures, as  
22 opposed to federal? Okay, I will look at this. And, as I  
23 said, I will do whatever is a medium -- of all those -- and  
24 I'll try to do it in the order that he said, if there are  
25 medium. But you've got to be realistic about his criminal

1 history and the things he's been convicted of in the past.  
2 It's just a waste of time to try to put him into something  
3 that they are just not even going to consider.

4 Okay, if there's nothing further, then --

5 MR. MUEHLECK: Nothing further by the United States.  
6 Thank you, Your Honor.

7 THE COURT: We stand in recess.

8 MS. BARNARD: Thank you, Your Honor.

9 THE COURT: Thank you.

10 THE CLERK: Please rise.

11 The court stands recessed subject to call.

12 (The hearing in the above-entitled  
13 cause was concluded at 2:53 p.m.)

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I, Stephen B. Platt, Official Court Reporter,  
United States District Court, District of Hawaii, do hereby  
certify that the foregoing is a true and correct transcript of  
proceedings before the Honorable Helen Gillmor, United States  
District Judge.

/s/ Stephen B. Platt

MONDAY, FEBRUARY 13, 2006

STEPHEN B. PLATT, CSR NO. 248